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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 JUDITH RAANAN, *et al.*,

4 Plaintiffs,

5 v.

24 Civ. 697 (JGK)

6 BINANCE HOLDINGS LIMITED, *et*
7 *al.*,

Oral Argument

8 Defendants.

9 -----x
10 New York, N.Y.
11 April 22, 2025
12 11:10 a.m.

13 Before:

14 HON. JOHN G. KOELTL,

15 District Judge

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1 (Case called)

2 MR. KUSHNER: Good morning, your Honor, my name is
3 Amiad Kushner from Seiden Law for the plaintiffs. I'm here
4 with my partners, Jake Nachmani and Jen Bleacher and our
5 co-counsel Ed MacAllister from the Perles Law Firm.

6 THE COURT: Good morning.

7 MR. BANSAL: Good morning, your Honor. Anirudh
8 Bansal, Cahill Gordon & Reindel for the defendant Binance
9 Holdings Ltd. I'm joined at counsel table by my partner Sesi
10 Garimella, who is also here on behalf of Binance.

11 MR. MOLINA: Good morning, your Honor. Marco Molina
12 from Baker Hostetler. We represent Changpeng Zhao in this
13 litigation. And I'm joined here by my partner Joanna Wasick
14 from the same law firm. Thank you.

15 THE COURT: All right. So there is a motion for
16 reconsideration and to certify to the Second Circuit for
17 interlocutory appeal. I'm familiar with the papers. I'll
18 listen to argument. But, as I say, I'm familiar with the
19 papers.

20 Mr. Bansal.

21 MR. BANSAL: Thank you, your Honor.

22 Judge, I know that you don't often grant oral
23 arguments on motions like this, so I do appreciate you giving
24 us time. I don't want to repeat any of our briefing. I really
25 would like to focus on questions that you might have. But I

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1 have --

2 THE COURT: Well, the main question is with respect to
3 both the motion for reconsideration and the motion to certify,
4 you're not suggesting that I missed *Twitter*. So it's not a
5 case for reconsideration because the Court overlooked an
6 opinion that was brought to the Court's attention. I had a lot
7 to say about *Twitter* and how I thought it did not preclude the
8 plaintiff's case in this case. So it would appear that this is
9 simply a case where you disagree with my reading of *Twitter* as
10 it applies to this case. But that is not traditionally a basis
11 for reconsideration. Other courts, at least two other judges
12 in this district, have denied reconsideration after *Twitter*.
13 And the response is they erred. So that's not a strong case
14 going in. As a matter of courtesy, really, I granted argument
15 on the motions because you plainly put a lot of effort into
16 both motions. So here you are, and, as they say, here I am.

17 MR. BANSAL: Kind of you to say that, Judge, and I do
18 hope to persuade you that the Court, in its February 25th
19 order, did overlook aspects of what *Twitter* requires and what
20 JASTA, as interpreted by *Twitter*, requires. And, at a minimum,
21 I hope to persuade you, Judge, that there is such a substantial
22 basis for a difference of opinion and that so much could be
23 gained from an appeal right now, that a certification, under
24 1292, is appropriate.

25 THE COURT: I mean, we all know what the effect of

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1 certification will be. It would be if the Court of Appeals
2 decided to take the case, unlike its traditional reluctance to
3 take a case on interlocutory appeal, it could be a year while
4 the case is stalled. That's not a way to expedite the final
5 resolution of the case. But go ahead.

6 MR. BANSAL: Judge, I do think that judicial
7 efficiency could be served, would be served, by not having the
8 parties go through an entire discovery process, summary
9 judgment, and trial before a ruling on, what I believe is a
10 discrete and controlling legal issue, is rendered.

11 THE COURT: But, of course, you would have the
12 opportunity for a motion for summary judgment at the conclusion
13 of discovery with the enlightenment of any cases, including the
14 other case that the parties point to that's pending before the
15 Second Circuit. But we wouldn't have lost the time where the
16 case was otherwise stalled.

17 MR. BANSAL: I'm sorry, Judge. I didn't mean to
18 interrupt you.

19 THE COURT: No, you're very polite. You weren't
20 interrupting me.

21 MR. BANSAL: We wouldn't spend the resources and time,
22 both parties, of going through discovery and the Court wouldn't
23 have expended the resources and time in ruling on a motion for
24 summary judgment. So I think that there is something to
25 counterbalance the delay that is inevitable in the Second

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1 Circuit appeal, it happens in every appeal, and letting
2 discovery go forward.

3 I would say, Judge, with respect to the cases where
4 interlocutory appeal and motions for reconsideration have been
5 denied, I don't think that two characteristics are so clearly
6 apparent. And the first characteristic, Judge, is that the
7 Court did not find, and the plaintiffs do not even try to
8 allege, that there was any scienter with respect to the
9 attacks. I think that is clear. It is undisputed.

10 The second thing, Judge, and this is in dispute, that
11 the plaintiffs have not alleged a definable nexus between
12 Binance's conduct and the attacks that injured their clients.
13 Now, the plaintiffs dispute how we would characterize the
14 Court's findings on that. When the Court said there was not a
15 close nexus or a close nexus was lacking, that doesn't mean
16 that the nexus was attenuated. But I think it's important,
17 Judge, that the plaintiffs did not tie a single dollar
18 transacted on the exchange, a single transaction on Binance's
19 exchange, a single user that was a customer of Binance to the
20 attack, not that they funded the attacks, not that they
21 participated, not that they paid a martyr payment to anybody,
22 nothing, Judge. And this Court actually in another part of the
23 order in discussing the proximate cause element of primary
24 liability held that the causal link of Binance's provision of
25 financial services and the plaintiffs' injuries is too

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1 attenuated, and too attenuated to support the inference, now
2 these are my words, that Binance's conduct was "a substantial
3 factor in causing the October 7th attacks and that the attacks
4 were a reasonable foreseeable natural consequence of the
5 defendants' actions." The Court said that the allegations here
6 are too attenuated from the attacks to meet those requirements.
7 The Court noted that the amended complaint is devoid of any
8 factual, non-conclusory allegations that the defendant provided
9 money directly to Hamas and PIJ to carry out the attacks.

10 Judge, it seems clear to me from my reading of Twitter
11 that in that situation, Twitter's sliding scale, which I don't
12 think anyone disputes, would require and required that
13 plaintiffs meet a "drastically increased," those are the
14 Supreme Court's words, a drastically increased burden to show
15 that the defendants somehow consciously and culpably assisted
16 in the attack. That they culpably associated themselves with
17 the attack and participated in it as something they wished to
18 bring about. Judge, our contention is that that drastically
19 increased burden that the Supreme Court says is required by
20 JASTA, as a matter of statutory requirements, is what the
21 February 25th order did not apply.

22 Respectfully, Judge, what the 25th order did was find
23 it sufficient that the plaintiffs had alleged assistance to
24 Hamas and PIJ associate accounts independent of the attacks,
25 hovering above the attacks themselves. If you look at page 70

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1 of the opinion, what the Court says is that the financial
2 assistance allegedly provided was substantial, even if not
3 directly targeted at the October 7th attacks. And it goes on
4 to talk about assistance to Hamas and PIJ, in general. And I
5 will say, Judge, that the plaintiffs haven't even alleged
6 anything more. The plaintiffs say that their theory of
7 recovery, their theory of liability and aiding and abetting is,
8 and I'm quoting, "when you are knowingly providing financial
9 services to terrorists, you can be held liable for aiding and
10 abetting." That is the plaintiffs' theory of liability. They
11 don't even pretend that it's anything else.

12 Judge, that's exactly what the Ninth Circuit did in
13 *Twitter*. That's exactly what the Supreme Court rejected in
14 *Twitter*. The notion that the Ninth Circuit and the plaintiffs
15 here have framed the issue of substantial assistance as turning
16 on the defendant's assistance in *Twitter* to ISIS's activities
17 in general, and that's exactly what the Supreme Court said was
18 not sufficient. The question the Supreme Court said is whether
19 defendants gave substantial assistance to ISIS with respect to
20 the Reina attack there. So they framed substantial assistance
21 as substantially assisting the organization, and I think that,
22 unfortunately, that carried through the order -- sorry, Judge.

23 THE COURT: *Twitter* goes back to the classic
24 definition of aiding and abetting, and the DC Circuit case
25 about how a person could be found guilty of aiding and abetting

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1 without even knowing about the specific crime that was at issue
2 because of the personal involvement over time with the criminal
3 wrongdoer. And *Twitter* left open the sliding scale and viewed
4 *Twitter* as a case where there was just insufficient contact and
5 didn't set out the precise boundaries but left it to further
6 development. *Twitter* was at an extreme end because a contrary
7 decision in *Twitter* would have made *Twitter* responsible for
8 vast crimes, and the Court was not prepared to go that far.
9 But made it clear that the boundaries would have to be
10 developed in subsequent cases under a standard of aiding and
11 abetting liability.

12 MR. BANSAL: Judge, I think there's two doors that
13 *Twitter* left open that might relax the sliding scale. One is
14 the situation, and I think you alluded to this now, Judge, the
15 assistance or conduct that ended up assisting the tortfeasor
16 was so systemic and pervasive that it was almost like a
17 conspiracy. And in a conspiracy one can, as you know, Judge,
18 be held accountable for the reasonably foreseeable acts of
19 one's coconspirators. That's not what the plaintiffs have
20 alleged here. What they've alleged and what the order is based
21 on is the notion that the services, which would otherwise be
22 routine, were provided in an unusual or dangerous way. And I'd
23 actually like to talk about that. Because I think probably
24 were it not for that finding, I believe that the Court would
25 have to have applied the drastically increased standard of

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1 Twitter and found that the failure to even try to allege that
2 Binance or the defendants had specific scienter with respect to
3 the attacks, would have precluded the claim.

4 But let's talk about the dangerous and unusual, sort
5 of, exception. The order, at page 66, says that the reason
6 that the services were unusual was that they were designed to
7 evade government detection and regulation. So it was the
8 intentional circumvention of the Bank Secrecy Act and IEEPA. I
9 will say, Judge, that the allegation that Binance intentionally
10 circumvented terrorist financing regulations, the Bank Secrecy
11 Act and IEEPA is present, is a feature in just about every Bank
12 Secrecy Act and IEEPA violation. Because criminal violations
13 of those statutes, as you know, Judge, require willfulness.
14 Willfulness is intent plus. So intentional circumvention of
15 money laundering and sanctions regulations is built into the
16 violation.

17 For that reason, Judge in *Siegel*, in *O'Sullivan*, in
18 *Wildman*, there were the same violations of those intentional
19 circumvention of those duties. And I will say, Judge, in those
20 cases which were stopped at the motion to dismiss, they did not
21 survive motions to dismiss -- *Siegel* was a Second Circuit
22 case -- the conduct was much more intentional, the evasion of
23 sanctions was much more intentional than we have here. There
24 was, in *Siegel*, wire stripping or specialized services that
25 were directed at the terrorist group. In *Wildman* the bank has

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1 a client, a fertilizer company, that was making something that
2 the U.S. Army walked into the offices of the bank and said,
3 "you are banking somebody that is creating something that is
4 killing American soldiers." The bank then went ahead and gave
5 another loan to that fertilizer company that enabled it to
6 reduce the bottlenecks in the production of this fertilizer.
7 And in that situation, that was a much more intentional
8 circumvention of AML regulations under IEEPA. And that in
9 itself didn't make the goods or the services unusual.

10 If you look at the cases that you cited, Judge,
11 *Kaplan, King, Bonacasa* that the order cites, the thread that
12 runs through all of those cases is preferential treatment of
13 the terrorist group, something special that is given to them.
14 In *Bonacasa* it's the fertilizer company. They gave them
15 specialized loans. In *Kaplan*, the bank had accounts in the
16 name of Hezbollah leaders, and that was reported by the UN.
17 But that's not the kind of thing that is evident here.

18 THE COURT: Well, in this case there was at least one
19 example of Binance knowing that the account was a terrorist
20 account. And they notified the depositor and told the
21 depositor that they would return the money.

22 MR. BANSAL: I want to talk about that, Judge. But I
23 just want to finish the point that things that run through
24 these cases, and the Court cited it correctly in the order, a
25 main feature of them is special treatment, and that's important

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1 under Twitter. That's important. The Supreme Court found it
2 important that Twitter was treating ISIS and ISIS's content
3 just like everybody else. Judge, I think the same is
4 absolutely true of Binance. The allegation is not that Binance
5 filed a lot of SARs but then when it came to an account that it
6 had noticed was linked to Hamas or with PIJ, they said, "no,
7 no, don't file SAR on that account." The incident that you're
8 talking about in Paragraph 216 of the complaint, what happens
9 is that a Binance employee says if that person is a VIP, then
10 let them take their money and leave. Okay. But close the
11 account. How does that substantially assist? How does that
12 help Hamas? All it does is it closes the account. And also,
13 Judge --

14 THE COURT: It returns the money.

15 MR. BANSAL: Well, all that is, Judge, is not meeting
16 your AML obligation. If the money was -- if Binance had met
17 its AML obligations, arguably, it would block and report. And
18 it would freeze the money so that OFAC could come and get it.
19 But the complaint and the thing that Binance pled guilty to was
20 not doing that for anyone. It wasn't that Binance had
21 effective controls, but when it came to Hamas and PIJ it gave
22 them special treatment. Just like Twitter and unlike the cases
23 that the Court cited King, Bonacasa, and Kaplan, there was
24 nothing special about the way that Binance reacted to
25 notifications that there were Hamas-associated accounts. And,

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1 please, Judge, I'm not trying to say that's okay.

2 THE COURT: Just consider what you're saying. They
3 were required to freeze the account and report it. They didn't
4 do that. They gave the money back to a known terrorist group.
5 And the argument is, but that's not special treatment for this
6 terrorist group. They did it for everyone who was on the list
7 of people that they had to block accounts for. There's nothing
8 different about this particular terrorist group.

9 MR. BANSAL: Judge, it's not that they did anything
10 for everyone. It's that they didn't file SARs. That is the
11 allegation. It's not that they provided a service to people
12 that were on SDN lists. It's that they treated them just like
13 everybody else. That's not right, Judge. That's what Binance
14 paid \$4 billion for. It's what Mr. Zhao served prison time, a
15 willful violation of the Bank Secrecy Act.

16 I do want to say, Judge, I'm going off of, when I say
17 they had an obligation to freeze, I'm going off knowledge that
18 it is probably 15, 20 years old, I don't know that. I'm
19 assuming that. But what I'm assuming, even assuming that, it's
20 nothing different than what Binance provided to anyone else.
21 *Halberstam*, it's also a situation where there was one client.
22 This is not a CPA who had -- Ms. -- I think her name was
23 Hamilton -- she wasn't a CPA that had many clients, not
24 hundreds of clients, one of which was Mr. Walsh. It was that
25 she only worked for Mr. Walsh, and that's not what's being

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1 alleged here.

2 THE COURT: But, you know, *Halberstam* is a case that
3 really stretches aiding and abetting liability which has now
4 been blessed as the standard for aiding and abetting liability.

5 MR. BANSAL: It does stretch it, Judge, but this --

6 THE COURT: That's what the Supreme Court told us is
7 the law.

8 MR. BANSAL: The Supreme Court said that *Halberstam*
9 remains. And the Supreme Court did say you can't
10 mathematically apply *Halberstam*. It's a set of factors that
11 guide the ultimate question, which is did the person or the
12 defendant render substantial assistance in the tort? And so
13 *Twitter* continually tried to bring, *Halberstam*,
14 notwithstanding, *Twitter* is a case from the Supreme Court and
15 it's actually interpreted in the statute that is at issue.
16 *Halberstam* is a common law case. So *Twitter* clearly controls
17 if there's any inconsistency between it and *Halberstam*. I'm
18 not saying that there is. But *Twitter* continually brought the
19 analysis back to the specific tort that injured the plaintiff
20 and whether the defendant substantially assisted in that tort.
21 What I'm saying, Judge, is that the only reason, it seems to
22 me, that the February 25th order did not apply that, was this
23 finding that there was something unusual about the services
24 that were applied to Hamas. And I guess what I'm saying,
25 Judge, is that there was nothing unusual. Like in *Twitter*, the

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1 Supreme Court said your problem, the plaintiffs, your problem
2 is not what Binance did -- sorry, not what Twitter did for
3 ISIS, it's what Twitter did for everyone. It's what Twitter
4 failed to do for everyone. And that's exactly the case here.
5 Judge, it's the systemic non-filing of SARs. It's not the
6 systemic anything with respect to Hamas and PIJ. The
7 allegations in the complaint that relate to Hamas and PIJ, they
8 end in 2020 -- I think it's around 2020 they end.

9 And then there is blockchain analysis that I'm sure my
10 colleague is going to talk about. The blockchain analysis,
11 Judge, it doesn't say anything about Binance's state of mind.
12 It doesn't say anything -- they haven't even tried to allege
13 that Binance knew of any Hamas connections, which they haven't
14 spelled out at all. They haven't even tried to allege that
15 Binance knew of any of that at the time the transactions were
16 occurring or any time before the attack.

17 And that's another reason, Judge, just while I'm on
18 it, Footnote 22 of the opinion distinguished *Siegel* on the
19 basis that it was crucial in *Siegel* that the bank's assistance
20 or alleged assistance ended ten months before the attacks, and
21 that made a finding of knowing substantial assistance
22 implausible. Here, Judge, the blockchain analysis says nothing
23 about knowing financial assistance. I looked back at the
24 complaint and the allegation that is closest in time to the
25 attack comes from or purports to discuss a February 20, 2022,

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1 Times of Israel article that says that, according to the
2 complaint, that Binance wallets were seized in connection with
3 an operation against Hamas. But Judge, two things: First of
4 all that's February 2022. It's longer back than was the case
5 in *Siegel*. I also went back and I looked at the article,
6 Judge, there is actually no mention of Hamas in the article.
7 They just misstated what's in the article. So you have to go
8 back beyond 2022 to find anything that is directed in the
9 plaintiffs' telling at Hamas. So, again, the attenuation is
10 actually much more than in the cases where it was found that
11 there wasn't a liability.

12 Judge, I think at a minimum, and I'm sure there is
13 going to be vehement disagreement when my colleague gets up,
14 and I can't tell if maybe the Court still disagrees, but I have
15 to say that it seems -- it seems like a fairly easy question
16 whether this is a substantial, there are substantial grounds
17 for disagreement. You got *Wildman* in the Eastern District
18 saying that walking into a bank's office and saying you're
19 manufacturing this fertilizer is not sufficient -- saying you
20 are banking a fertilizer company that is creating a dangerous
21 explosive, that's not sufficient. You got *Bonacasa* in this
22 district that says exactly the opposite. There are statements
23 in *Kaplan*, in *Honickman*, about intent that *Twitter* is
24 completely inconsistent with. I'm not going to repeat our
25 briefs on that, but *Twitter* is completely inconsistent with

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1 those. There is definitely substantial grounds for
2 disagreement about the meaning of JASTA, as interpreted by
3 Twitter. This case is much more similar to Judge Failla's
4 decision in *SEC v. Coinbase* than in any of the cases the
5 plaintiffs cite.

6 And I know, Judge, that the plaintiffs have said,
7 and --

8 THE COURT: I don't agree with that. I thought that
9 Judge Failla's decision really turned on an issue of law that
10 applied to lots of cases. And I'm not sure -- I guess there
11 was disagreement, wasn't there, as to whether it should be
12 certified. But it appeared to me to be a question of law
13 rather than one that depended very much on the factual
14 allegations in the complaint.

15 MR. BANSAL: Judge, it was no more a question of law
16 as it is here. Judge Failla said in her decision that she had
17 to determine whether, under the Securities Act, the
18 cryptocurrency was an investment contract. She had to consider
19 not only the pleadings but the economic realities and totality
20 of circumstances surrounding the offer of an investment
21 contract, including the intentions -- that's always very fact
22 deep -- including the intentions and expectations of the
23 parties. Here, we are not actually asking the circuit to do
24 any of that. We are assuming every allegation in the complaint
25 for these purposes, we dispute all of them, many of them, but

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1 assuming every allegation in the complaint to be true, and
2 saying that even taking all that as true, JASTA, the
3 controlling statute is being misinterpreted.

4 THE COURT: You don't see any distinction between, are
5 the facts of this case sufficient to allege aiding and abetting
6 liability, compared to whether this investment vehicle is an
7 investment contract?

8 MR. BANSAL: Judge, I think that if the outcome is the
9 same, the import is the same. Because if it were not an
10 investment contract, the SEC has no case. So in the end,
11 right, it is whether, in her case, a narrower question, in the
12 Coinbase case a narrower question of whether the facts alleged
13 meet the statutory definition of an investment contract, just
14 because there were other elements. But here it is in some ways
15 also a narrow question, Judge, about what is the meaning of
16 this particular element of JASTA, the substantial assistance,
17 the knowing and substantial assistance to the tortfeasor in the
18 commission of the tort. So to me, Judge, I'm having trouble
19 distinguishing them. I can't see -- I'm not trying to dismiss
20 the point, Judge, but it is very similar to a case where, yes,
21 we're taking facts and applying the law to them, but if the
22 plaintiffs were right then every time you take facts and apply
23 the law to them, it's not -- you can't -- it's not certifiable.
24 Every case involves taking facts and applying the law to them.
25 We are talking about the meaning, the interpretation of a

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1 controlling statute based on controlling Supreme Court
2 precedent. That's what the pure issue of law is about which I
3 think there is no doubt that there is a substantial ground for
4 disagreement.

5 And there are a lot of cases. I know that you said,
6 Judge, that Judge Failla's case would have helped a lot of
7 cases. I think that's true. There is over 20 cases pending in
8 this circuit where similar issues have been raised that would
9 be aided by this.

10 THE COURT: The parties point out that there is
11 another case pending in the Second Circuit now, is it involving
12 Deutsche Bank where this is also at issue before the Court of
13 Appeals.

14 MR. BANSAL: That's true. It's *Wildman*. *Wildman* also
15 involves --

16 THE COURT: How long has that one been pending?

17 MR. BANSAL: I could find it.

18 THE COURT: I'm sure someone will tell me.

19 MR. BANSAL: Judge, it was argued in March of last
20 year.

21 THE COURT: It's been pending for over a year.

22 MR. BANSAL: It has been, Judge. Again, I don't think
23 that means because the circuit takes an average of 13 months,
24 at the time I last looked, between briefing and decision, it
25 doesn't mean that the judicial -- the efficiencies of stopping

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1 discovery at this point, not having the parties -- you know,
2 plaintiffs are going to have to go through depositions too,
3 Judge, not just us and produce discovery and also going to have
4 to respond and make summary judgment motions, all of that.

5 THE COURT: They are not seeking interlocutory appeal.

6 MR. BANSAL: No. But I'm saying their efficiency is
7 not just about the defendants, the efficiencies that would,
8 sort of, benefit the defendants.

9 THE COURT: The only reason, actually, that I brought
10 up the pending Second Circuit case is that you'll get guidance
11 from the Second Circuit, presumably when that case comes out.

12 MR. BANSAL: Maybe.

13 THE COURT: Well, if not, that means that this is a
14 very fact-based decision.

15 MR. BANSAL: No, Judge. I said "maybe" because the
16 *Wildman* decision is also being appealed on the grounds of
17 general awareness. So it is possible that that district
18 court's decision will be sustained on the grounds of general
19 awareness, and we won't have any guidance on knowing and
20 substantial assistance.

21 Again, the fact that an issue is already pending
22 before the circuit, maybe that means we stay this until that
23 happens. But, again, there is no guarantee that the circuit's
24 decision in *Wildman* is actually going to help dispose of this
25 case.

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1 THE COURT: Okay.

2 MR. BANSAL: I'll yield to my colleague unless there
3 are any other questions.

4 THE COURT: Thank you.

5 MR. BANSAL: Judge, do you want to hear, my colleague
6 Mr. Molina is going to be arguing the personal jurisdiction
7 aspect for the motion of reconsideration. I apologize for not
8 having raised that before we started. But would you like to
9 hear that first, or would you like to let plaintiffs --

10 THE COURT: No, I'd like to hear all of the motions
11 first, before a response.

12 MR. BANSAL: Okay. Thank you.

13 MR. MOLINA: Good morning, your Honor. Your Honor
14 mentioned earlier, you're familiar with the briefs. I'm not
15 going to go into them in large detail. But I do want to focus
16 on this jurisdictional discovery ruling, which unlike the
17 arguments you just heard were not briefed during the motion to
18 dismiss phase. I'm going to just briefly hit on three points
19 if that's okay, your Honor.

20 The first point is that jurisdictional discovery is
21 inappropriate where the plaintiff has not established or
22 alleged a viable personal jurisdiction theory. We believe in
23 this case -- and I'll get to it in a second -- we believe in
24 this case, this is one of the cases where that's the case.

25 Secondly, I'm going to get to the point that because

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1 they haven't alleged a viable personal jurisdiction theory,
2 what's come out now post order, these meet and confers that we
3 had, that your Honor has ordered us to have with plaintiffs'
4 counsel is we've noticed that they are expanding their
5 discovery theories beyond what was alleged in the complaint.
6 Again, we think this underscores the non-viability of the
7 personal jurisdiction theory that's alleged in the complaint.

8 And the third point I'm going to make is that now,
9 because we have shifting theories, we are in a state where
10 essentially this is one huge fishing expedition. And we heard
11 a lot of from your Honor and my colleague about judicial
12 efficiency. We think this is headed towards a path of needless
13 litigation over what's the scope of jurisdictional discovery
14 and so forth.

15 THE COURT: Those are the kinds of discovery disputes
16 that are dealt with all the time. They're not terribly
17 difficult. Sure, you have to have a meet and confer and then
18 there'll be a decision.

19 MR. MOLINA: Yes, your Honor. But with respect to
20 jurisdictional discovery in particular, the case law is clear.
21 It's not your typical discovery practice. It's meant to be
22 limited, and it's meant to be keyed to the allegations of
23 personal jurisdiction in the complaint. And what I'm trying to
24 communicate, your Honor, is that what plaintiffs are doing is
25 they are straying from what is alleged in the complaint.

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1 Let me go back to my first point for a second so I can
2 go through that. This is the *Reed International* case that we
3 cited to in our motion papers. The *Reed International* case is
4 a decision from this district in 2023. And it collects all the
5 case law that stands for the proposition that jurisdictional
6 discovery is inappropriate where the facts that will be
7 discovered will not sustain personal jurisdiction.

8 Then the question is, what's the theory here that they
9 are supposed to discover facts to try to sustain? Well, as
10 your Honor correctly noted in the order, the jurisdictional
11 theory that's alleged is, what I'm going to call for the sake
12 of this argument, a market maker theory. Essentially, they're
13 saying Binance was able to get to the point where Binance got
14 because they had these VIP customers based in New York, who
15 were market makers and provided sufficient liquidity. And
16 their allegation is that because of that significant business
17 relationship, Binance should be haled into court in New York
18 for any tort that could arise from that exchange, from
19 customers using the exchange, including, in this case, the
20 alleged use of Binance by Hamas and PIJ to fund their terrorist
21 attacks in Israel.

22 Your Honor, the problem with that theory is, first of
23 all, it sounds more like a general jurisdiction than is
24 personal jurisdiction because it doesn't actually directly link
25 the contacts in the forum with the attacks on Israel. That's

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1 fatal under the CPLR because, as your Honor knows, there has to
2 be a substantial relationship between the contacts in the
3 forum, in this case the market makers in New York and the
4 conduct at issue or the scheme at issue which is the attacks on
5 Israel in 2023. On the face of the complaint, your Honor,
6 there absolutely no linkage whatsoever. And your order
7 actually said as much. They allege -- they make these
8 conclusory, vague allegations on information and belief. But
9 they don't actually tie it.

10 What we disagree with, your Honor, is when your Honor
11 said maybe if they have discovery, maybe they would be able to
12 come up with facts. Because as I'm trying to get to, your
13 Honor, any fact that -- let's just play it out. Let's assume
14 for the sake of argument that they are going to get discovery
15 and they are going to prove their theory, prove that Binance
16 got to the size it got and had the sufficient liquidity that it
17 was able to have because of market makers in New York. That
18 says nothing about any relationship. That does not meet the
19 articulable nexus standard under CPLR 302.

20 And I know your Honor cited in the order the *Licci*
21 case. I think it's *Licci* 2 from the Second Circuit to
22 essentially support the idea they might be on the right path to
23 establishing personal jurisdiction. As your Honor knows, in
24 the *Licci* case, the issue is very similar in some ways to
25 what's happening here, plaintiffs were victims of a terrorist

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1 attack in Israel. In that case it was Hezbollah that committed
2 the attacks, and they sued a foreign bank in New York because,
3 under their theory, they said this bank had sufficient business
4 contacts in New York. Now, where the case is different, your
5 Honor, in that case the personal jurisdiction theory was that
6 the contact, which in that case was a corresponding bank in New
7 York, was used to clear transactions that directly funded the
8 terrorist attacks in Israel. That's that linkage that we don't
9 see here at all. They don't make the allegation on the face of
10 the complaint that these VIP customers were clearing
11 transactions on the Binance exchange that directly funded
12 whatever attacks occurred, the attacks of October 2023 from
13 Hamas and PIJ. That's not their allegation.

14 This is more akin to the case we cited to in our
15 papers, your Honor, the *Bristol Myers Squibb* decision from the
16 Supreme Court in 2017. As your Honor probably knows, in that
17 case -- and I'm from California, and I know too much about this
18 case. The California state courts have this practice where
19 when it came to personal jurisdiction, specifically specific
20 jurisdiction, the Court said, well, we'll do a sliding scale.
21 If your context of the forums are so strong, we will relax the
22 whole linkage from the contact to the underlying conduct. And
23 essentially when you read the complaint, that's essentially
24 what they are trying to say. They're saying that Binance had
25 such strong contacts in New York that we should just forgive

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1 the fact that the plaintiffs don't actually link those contacts
2 to the attacks in Israel. Your Honor, the Supreme Court
3 rejected that argument as a loose and spurious form of general
4 jurisdiction, and we think that's the case here.

5 Now, if I may go to my second point, because there's
6 no viable jurisdictional theory here, we are starting to see
7 what really should be improper here. Which is that we are
8 seeing the plaintiffs use this jurisdictional discovery that
9 your Honor issued to go on a fishing expedition and try to come
10 up with fact new facts for a new theory that's beyond what they
11 actually allege in the complaint. This is on page 18 of their
12 opposition papers, your Honor. And it's also referenced in the
13 joint letter that the parties submitted to your Honor on
14 March 11 after a meet and confer to discuss the scope of
15 jurisdiction in this case.

16 THE COURT: Have I assigned the jurisdictional
17 discovery dispute to the magistrate judge yet?

18 MR. MOLINA: Yes. There was a letter. And I'm sorry,
19 I'm looking at my counsel. Yes, my understanding is that this
20 has been designated.

21 THE COURT: Okay. I'm sure that the magistrate judge
22 will appropriately rule on any issues with respect to the scope
23 of appropriate jurisdictional discovery, making sure that it's
24 proper and proportional to the relevant issues.

25 MR. MOLINA: That's fine, your Honor, but the

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1 fundamental argument that we are trying to present here is,
2 again, even if the magistrate judge corrals the plaintiffs and
3 says let's stick to the market-maker theory that's alleged in
4 the complaint. There is no amount of facts -- again, we are
5 not here disputing the facts related to that theory. But for
6 the sake of this argument we are just going to assume they are
7 true, that they will be able to prove that. What is the
8 relationship between those contacts in New York to a terrorist
9 attack in Israel with foreign actors based in the Middle East?
10 They don't have anything on the face of the complaint. And
11 again, your Honor, the case law is clear in these situations.
12 Even though your Honor enjoys broad discretion generally to
13 issue jurisdictional discovery, there is a precondition, the
14 theory has to be viable, as a matter of law, otherwise everyone
15 is spinning their wheels.

16 And if I may just go to the third and final point.

17 "Fishing expedition" is a phrase that maybe is overused and --

18 THE COURT: No, it's a perfectly fine phrase. It's
19 been around for a long time.

20 MR. MOLINA: I think in this case the case law is
21 clear, again, that yes, jurisdictional discovery is a tool that
22 the Courts may, at times, employ. But jurisdictional discovery
23 need to be limited. So a fishing expedition in a
24 jurisdictional discovery setting is even more concerning
25 because, again, they have not met their *prima facie* burden yet

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1 of establishing personal jurisdiction. We have foreign
2 defendants not based here, not typically haled into court here
3 in this district, and are not subject, typically, to U.S.-style
4 discovery. We've cited to the Reed case which says when it's a
5 foreign defendant, in particular, the Courts are typically
6 reluctant to issue jurisdictional discovery at all. And when
7 you add on top of it here that there is a moving target,
8 plaintiffs don't know quite what their jurisdictional theory
9 is. Again, just making reference to page 18 of their
10 opposition papers, they tee up what I'm going to call a
11 counter-party theory. Which is essentially that maybe they
12 weren't just market makers, maybe they were counterparties to
13 these transactions that we believe Hamas and PIJ conducted on
14 the exchange. That's not in the complaint. They are literally
15 moving the goal posts and using this discovery ruling to go
16 fishing.

17 Again, we cited the case in our papers. I'm happy to
18 answer any questions. I don't want to just go on and on about
19 those cases, but we think it's clear in that context your Honor
20 should reconsider the ruling on jurisdictional discovery and
21 instead just dismiss the complaint. And if they want to
22 continue with this case in New York, they would have to come up
23 with a viable theory for personal jurisdiction under the
24 long-arm statute.

25 THE COURT: Thank you.

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1 MR. BANSAL: Judge, I apologize. Just so the record
2 is clear, it was pointed out to me in describing the Times of
3 Israel article from February 2022 I said it was "Hamas" that
4 isn't mentioned in the article. It's "Binance" that is not
5 mentioned in the article. I apologize for misspeaking.

6 THE COURT: Thank you.

7 MR. KUSHNER: Your Honor, with respect to your ruling
8 on whether plaintiffs have stated the claim for aiding and
9 abetting, as your Honor I think pointed out correctly, they
10 haven't shown anything that was overlooked. Counsel went
11 through defendant's interpretation of *Twitter*, defendant's
12 interpretation of some of the case applying *Twitter* and
13 although they may disagree with your Honor's painstaking and
14 careful and well-reasoned analysis, that's not a basis for
15 reconsideration. They have to show facts or law that was
16 overlooked, and they haven't done that. They haven't pointed
17 to anything that was overlooked, not a single thing. They're
18 just debating what you looked at and the way that you came out
19 on the law and the facts.

20 I'll just say a couple more things on that and maybe
21 I'll move on the jurisdiction point. Your Honor, they said
22 that our entire aiding and abetting theory comes down to the
23 allegation that Binance knowingly provided financial services
24 to terrorists, and that is not sufficient under *Twitter*. But,
25 your Honor, it's more than that. As you recognized in the

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1 February 25th order, the facts pled in this case have two very
2 different components, which make this decision different from
3 Twitter where the Supreme Court rejected the Ninth Circuit's
4 analysis. And your Honor correctly pointed out, and this is at
5 page 63 of the order, defendants in this case allegedly had an
6 independent duty to act that was not present in Twitter. So
7 you have regulated entities and they have duties, and that was
8 not an issue in Twitter because you have the social media
9 companies, YouTube Google, Facebook, they don't have those very
10 comprehensive regulatory duties.

11 And the second significant difference between this
12 case and the facts in Twitter, as your Honor correctly pointed
13 out in the order, and this is at page 64 and 66 of the order,
14 your Honor wrote that the defendants allegedly, "took
15 affirmative actions to enable terrorist groups to transact on
16 the Binance platform and thus provided service that might
17 otherwise be considered routine cryptocurrency transaction
18 services in an unusual way designed to evade government
19 detection and regulation." Again, it's not just knowingly
20 providing financial services to terrorists, and it's that
21 intentional circumvention of regulation, it's doing it in a
22 very unusual way.

23 And, your Honor, with respect to my colleague's
24 comment that somehow there is a whole universe of cases
25 involving willful violations of the Bank Secrecy Act or the

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1 International Emergency Economic Powers Act, and the attempt to
2 minimize the allegations in this case with respect to the
3 evasion of government regulations. I think that there is not a
4 single case in which you have this enterprise-wide intentional
5 circumvention of regulation and directed from the very top,
6 from Mr. Zhao all the way on down to the chief compliance
7 officer and the entire senior leadership of the company,
8 implementing deliberate policy to frustrate, to evade, to
9 circumvent regulation. There is not a single case like that.
10 So this case is very different in that respect as well.

11 My colleague mentioned that the complaint doesn't
12 plead scienter with respect to the October 7th attack. This
13 is, yet again, they're repeating the argument that somehow we
14 need to allege that there was a specific intent to bring about
15 the October 7th attacks or to bring about an act of terrorism,
16 and that's not the law. That's not what *Twitter* says. You
17 don't need to plead -- in order have aiding and abetting
18 liability, you don't need to plead an intent to further the
19 ultimate terror attack. You don't need to plead that the aider
20 and abettor intended to further the primary violator's plan.
21 That's black-letter law. Your Honor pointed out in the order,
22 correctly, and there is just absolutely nothing to support what
23 they keep trying to argue again and again. There is not a
24 shred of authority in their favor on that.

25 They also -- my colleague said that we haven't tied a

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1 single dollar of money that was moved on the Binance exchanges
2 to the October 7th attacks. Again, that's not required.

3 Twitter expressly stated that a strict nexus is not required,
4 even remote assistance qualifies. And again, this point was
5 extensively discussed in the briefing that preceded the motion
6 to dismiss. It was discussed at argument. It was extensively
7 discussed in your order, and it's not a basis for
8 reconsideration.

9 And I think the same confusion about what Twitter
10 required and what the intent requirements are was in my
11 colleagues' discussion of some of the cases. So for example,
12 my colleague was talking about the fertilizer case. And in
13 that case the United States military approached Standard
14 Chartered Bank, and said the company that you're funding in
15 Pakistan is manufacturing fertilizer, and that fertilizer is
16 the main killer -- it's the main ingredient of bombs that are
17 killing American troops in Afghanistan. And even though the
18 Court upheld aiding and abetting liability for Standard
19 Chartered on those facts by continuing to provide financial
20 services for this fertilizer company, there is no allegation in
21 that case that Standard Chartered intended to bring about a
22 terror attack against United States troops in Afghanistan.
23 There is no allegation that Standard Chartered knew about any
24 plan to commit a terror attack. So the idea that somehow in
25 this case the plaintiffs have to allege that Binance and

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1 Mr. Zhao intended to bring about the October 7 attacks is just
2 not the law.

3 Your Honor, unless you have any questions about the
4 aiding and abetting portion of this, I want to move on to
5 jurisdictional discovery.

6 On jurisdictional discovery just preliminarily, your
7 Honor, we did, in accordance with the schedule that was agreed
8 and presented to the Court, we did serve an initial set of
9 jurisdictional discovery demands. But the defendants have not
10 yet responded to them. The parties have not yet met and
11 conferred. And any issues with regard to that -- any potential
12 issues have not been raised with us yet and certainly are not
13 part of the briefing that's currently before the Court. So
14 it's premature to be, at least today, debating hypothetical
15 issues that haven't been raised yet.

16 Setting that aside, I will say, your Honor, there is
17 no fishing expedition. Our requests were targeted to New York
18 VIP users, to New York bank accounts, and we also believe that
19 the discovery we are seeking is actually duplicative of
20 discovery that was previously sought by the government.

21 With respect to --

22 THE COURT: I'm sorry. Duplicative of discovery that
23 the government previously sought from the defendant?

24 MR. KUSHNER: That's our belief, yes.

25 THE COURT: So the argument is it's not burdensome?

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1 MR. KUSHNER: That's exactly what I'm trying to say,
2 your Honor. We don't think it's particularly burdensome. But
3 again, we haven't been presented with any objections, so we
4 just don't know what issue they may have.

5 With respect to jurisdictional discovery, we believe
6 your Honor was absolutely correct that there is a potentially
7 viable jurisdictional theory that could come out of
8 jurisdictional discovery. And our theory was mischaracterized
9 just now, and I want to just frame it correctly for your Honor.
10 But before I talk about what our theory is, I just want to talk
11 a little bit about what we are not required to show. Because
12 what my colleague said is that we are required to show a
13 connection between something that the defendants did in New
14 York and the October 7th attacks, but that's not the case. The
15 relevant scheme here is the provision of cryptocurrency
16 services to Hamas and PIJ. That's the aiding and abetting
17 theory. It's the substantial assistance. We're not required
18 to connect what Binance and Zhao were doing to the October 7th
19 attacks. That's black-letter law. It's in the *Licci* Case.
20 And your Honor correctly recognizes this. Your Honor said at
21 page 10 of the order, CPLR 302(a)(1), "does not require a
22 causal link between the defendants' New York business activity
23 and the plaintiffs' injury. But rather, it requires a
24 relatedness between the transaction and the legal claim." And
25 your Honor was quoting the Court of Appeals decision in *Licci*.

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1 And *Licci* also said that CPLR 302(a)(1), "does not
2 require that every element of the cause of action pleaded must
3 be related to the New York contacts, rather where at least one
4 element arises from the New York contacts, the relationship
5 between the business transaction and the claim asserted
6 supports specific jurisdiction under the statute." So here,
7 one element of the JASTA claim is the substantial assistance to
8 Hamas and PIJ. So if jurisdictional discovery can tie the
9 substantial assistance to New York, then there is a basis for
10 jurisdiction in New York. That's all that's required.

11 Your Honor, I'll move on to our jurisdictional theory
12 because I think that, again, I think my colleague
13 mischaracterized it. And there are several elements to it.
14 It's not simply the existence of market makers in New York. So
15 our complaint interweaves a couple of points that are related
16 to the market makers, and I'll try to kind of tease it out for
17 your Honor.

18 First of all, we allege that there were these high
19 volume U.S. customers, including market makers in New York,
20 trading firms in New York that provided liquidity that was
21 critical for the operations of Binance.com, which is the
22 international exchanges, Binance.com. And we explain that in
23 Paragraphs 11, 68, 155, and 157 of our complaint.

24 Moving on to a different part of the story, what we
25 allege is that at some point in time, Binance decides to create

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1 a U.S. platform which they call Binance.us So you have
2 Binance.com which is the international platform and then
3 Binance.us which is the platform that was ostensibly intended
4 for U.S. users. And what we allege in the complaint and this
5 is Paragraphs 176 to 180 of the complaint, is that when Binance
6 created Binance.us, Binance and its CEO, Mr. Zhao engaged in a
7 scheme to obtain high volume U.S. users on Binance.com, the
8 international exchange, by having them delete their U.S. Nexus
9 in KYC information. So they approached these high-volume
10 users, including many trading firms in New York, and they asked
11 them to update their KYC information to delete a U.S. Nexus.
12 So you have this intentional isolation of a group of trading
13 firms, high-volume users, many of whom are in New York. And
14 this is a critical point your Honor, this group is secretly
15 retained on Binance.com, and it's in New York. It's largely in
16 New York. And defendants deliberately did this. They wanted
17 these VIPs on Binance.com. They wanted to retain them. And,
18 your Honor, we don't know -- we don't know why Binance went out
19 of its way to retain those users on Binance.com. But what we
20 do allege is that whatever services Binance did provide to
21 Hamas and PIJ, the market makers were critical. The market
22 makers on Binance.com were critical to Binance's ability to
23 provide those services. And jurisdictional discovery can help
24 uncover why Binance secretly isolated this group of high-volume
25 market makers in New York in order to retain them on

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1 Binance.com.

2 And your Honor, respectfully this jurisdictional
3 theory, in other words, the notion that you are wrongfully
4 isolating a group of users in New York in order to retain them
5 on a platform, right? This is what makes this, it fits it
6 within *Licci*. Because *Licci* talks about the use of an account
7 in New York as "an instrument to achieve the very wrong
8 alleged." And *Licci* says it was deliberate and recurring. Now,
9 in *Licci* the instrument was a corresponding bank account in New
10 York. But here the instrument is a secretly retained group of
11 high-volume users in New York. So that is very much connected
12 to the allegation in this case. It's not simply about
13 Binance's business, generally, no, the intentional
14 circumvention of KYC and the fact that these retained users,
15 secretly retained users are critical to the Binance's ability
16 to provide the very services to Hamas and PIJ that are at issue
17 in this action, that's a pretty significant link, your Honor.

18 Your Honor, do you have any questions about what I
19 just said? I know it was a lot.

20 THE COURT: Nope.

21 MR. KUSHNER: My colleague also mentioned an
22 alternative theory of jurisdiction in New York which kind of
23 very simply, it involves the possibility that users in New York
24 actually acted as counterparties to transactions of Hamas and
25 PIJ, that argument is something that I mentioned at the oral

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1 argument on motion to dismiss, before your Honor issued the
2 order. It's not a brand-new argument. It was not something
3 explicitly mentioned in the complaint but is another
4 possibility which could be revealed by jurisdictional
5 discovery. But again, your Honor, the market maker theory gets
6 us there.

7 Unless, your Honor, has any questions, I'll rest.

8 THE COURT: No. Okay.

9 MR. BANSAL: I'll be brief, your Honor. You've given
10 us a lot of time, and I do thank you for your indulgence.

11 Just very quickly, my colleague said he tried to
12 distinguish what he called the Stand Chart case on the basis
13 that there was no allegation that the bank intended the attack,
14 and that there was no allegation that the bank had
15 foreknowledge of the attack. I was very surprised that he
16 tried to distinguish this case from this one because he said
17 the last time we were here that this complaint, his complaint,
18 does not allege that the defendants intended to bring about the
19 October attacks. It does not allege that the defendants
20 intended to bring about any act of terrorism. So I'm not sure
21 what he means. Is he making my point or his, with respect to
22 the Stand Chart case because it seems to prove mine.

23 Similarly, Judge, my colleague mentioned it's not his
24 entire theory that knowingly providing terrorists with
25 assistance without any reference to the attacks is their whole

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1 theory. Judge, I just refer you back to their brief. Their
2 brief at page on the motion for reconsideration says, the
3 allegation is, as your Honor correctly pointed out, when you
4 are knowingly providing financial services to terrorists, you
5 can be held liable for aiding and abetting. Again our view,
6 and I'm not going to belabor it, is that's what the Ninth
7 Circuit did in *Twitter*, and that's what is improper and that is
8 what is error.

9 THE COURT: Okay.

10 MR. BANSAL: And Judge, lastly, I would just point out
11 that the duties and the affirmative actions and the enterprise
12 violations, all you have to do is look at the *Siegel* case, all
13 you have to do is look at the other cases I cited. The same
14 things happened there. There is nothing about the duty or the
15 affirmative actions or the enterprise-wide violations that
16 distinguishes those cases from this one. Thank you, Judge.

17 THE COURT: All right.

18 MR. MOLINA: Just briefly, your Honor, on the
19 jurisdictional discovery, I just want to point out that my
20 colleague basically just admitted that under the market maker
21 theory that they are proposing there's no direct link to Hamas
22 or PIJ or the terrorists attacks. What I think I heard my
23 colleague say is that they are interested that this theory will
24 focus on how Binance did not disclose or failed to disclose
25 these market makers that were based in New York when they were

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1 migrating. They were using them with the international
2 exchange when they should have used them in the U.S. exchange.
3 Your Honor, the SEC and CFTC and other regulatory bodies
4 already looked into that, already prosecuted that. That's not
5 what this case is. This is an Anti-Terrorism Act case. It's a
6 case about terrorists attacks in Israel. What my colleague
7 just said here never tied these New York market makers to that
8 attack whatsoever.

9 And then he mentioned *Licci*. Again, I will not go
10 into detail, but I will say that *Licci* itself was a close call.
11 If your Honor remembers, the Second Circuit certified that
12 issue to the New York Court of Appeals because it wasn't sure
13 whether the statute reached the facts in that case. And what
14 the New York Court of Appeals said after certification is that
15 it's a close cause, but the only reason they said it did reach
16 is because they felt the new corresponding bank practice was
17 done pervasively and on purpose and to further the activities
18 of Hezbollah. That's not what's being alleged here. These New
19 York contacts, these market makers, there's no allegation they
20 were, in any way, involved whatsoever with Hamas or PIJ. Or
21 that they had any interest in furthering the activities of
22 those organizations. The two cases could not be more different
23 in that regard.

24 And as your Honor knows, we represent Defendant Zhao
25 in this litigation. These contacts, whatever import they have

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1 in this litigation, those are Binance's contacts. They are not
2 Mr. Zhao's personal contacts. So this loose and spurious
3 connection with it is even more attenuated with respect to him.
4 Thank you, unless, your Honor has any questions.

5 THE COURT: No. Thank you.

6 All right. I'm prepared to decide.

7 Although plaintiffs brought this action against
8 Binance Holdings Ltd and Changpeng Zhao pursuant to the
9 Anti-Terrorism Act and the Justice Against Sponsors of
10 Terrorism Act, JASTA. On February 25, 2025, the Court granted
11 in part and denied in part the defendant's motion to dismiss
12 the amended complaint, ECF No. 53. The defendants have now
13 filed a motion for reconsideration, ECF No. 57.

14 The motion to grant or deny a reconsideration rests
15 within the sound discretion of the district court, *U.S. Bank*
16 *National Ass'n v. Nesbitt Bellevue Property LLC*, 859 F. Supp.2d
17 602 (S.D.N.Y. 2012). The Court's reconsideration of a prior
18 order is an extraordinary remedy to be employed sparingly.
19 *Anwar v. Fairfield Greenwich Ltd.*, 800 F. Supp.2d 571, 572
20 (S.D.N.Y. 2011). Reconsideration will generally be denied
21 unless the moving party can point to controlling decisions or
22 data that the Court overlooked. *Schrader v. CSX Transp. Inc.*,
23 70 F.3d 255, 257, (2d Cir. 1995). This standard is strict, "in
24 order to discourage litigants from making repetitive arguments
25 on issues that have been thoroughly considered by the Court."

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1 *Range Road Music, Inc. v. Music Sales Corp.*, 90 F.Supp 2d 390,
2 391-392 (S.D.N.Y. 2000).

3 In this case there is no basis for reconsideration.
4 The defendants argue primarily that in denying the defendants'
5 motion to dismiss the plaintiffs' claims under JASTA, the Court
6 misinterpreted the Supreme Court's decision in *Twitter v.*
7 *Taamneh*, 598, U.S. 471 (2023), but the Court carefully
8 considered the *Twitter* decision and the arguments raised by the
9 defendants, and the defendants simply disagree with the Court's
10 conclusions. "Reiterating the same arguments is not a basis
11 for reconsideration. The fact that the defendants disagree
12 with the Court's decision is also not a basis for
13 reconsideration." *Beaner v. City of New York*, No. 19 CIV 9646
14 2021 WL 5827536 at *3 (S.D.N.Y. Dec. 7, 2021).

15 Similarly, the defendants disagree with the Court's
16 decision to permit jurisdictional discovery. However, the
17 defendants have failed to show this discretionary decision was
18 incorrect and have not pointed to any information that "might
19 reasonably be expected to alter the conclusion reached by the
20 Court." *Schrader* 70 F.3d at 257.

21 The motion for reconsideration is therefore denied.
22 The clerk is respectfully requested to close ECF Nos. 57 and
23 59, so ordered.

24 The defendants also move for the Court to certify for
25 interlocutory appeal, the portion of the order ECF No. 53 that

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denied the defendants' motion to dismiss the plaintiffs' aiding and abetting claims under JASTA, ECF No. 61. The Court may certify an issue for interlocutory appeal if, one, such order involves a controlling question of law, two, there is substantial ground for difference of opinion, and, three, an immediate appeal from the order may materially advance the ultimate termination of the litigation. 28 U.S.C. Section 1292(b). Certification "should be strictly limited because only exceptional circumstances will justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment." *In re*, 479 F.3d 281, 284, (2d Cir. 1996). "The decision whether to grant an interlocutory appeal from a district court order lies within the district court's discretion." *King County v. IKB Deutsche Industriebank AG*, 863 F.Supp.2d, 37-20 (S.D.N.Y. 2012).

In this case, there is no controlling issue of law as to which there is a substantial difference of opinion. Rather, the defendants disagree with the Court's conclusion that the amended complaint contained sufficient allegations to plead aiding and abetting liability under JASTA and the Supreme Court's decision in *Twitter Inc. v. Taamneh*, 598 U.S. 471 (2023). There is no substantial difference of opinion with respect to the legal standards articulated by the Supreme Court in *Twitter*. The dispute is over whether the factual allegations in the amended complaint are sufficient under

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1 Twitter, which "turns on the assessment of the pleading" and
2 "is not a pure question of law suited for interlocutory
3 appeal." *McGraw Hill Global Education Holdings LLC v.*
4 *Mathrani*, 293 F.Supp 3d, 394, 399, (S.D.N.Y. 2018).

5 Moreover, an immediate appeal would not materially
6 advance the ultimate termination of the litigation. Whether
7 the defendants are ultimately liable for aiding and abetting
8 under JASTA will depend on the facts of this case as developed
9 through discovery. Thus, an interlocutory appeal will not
10 materially advance the ultimate termination of this litigation
11 but will actually hinder it. A lengthy interlocutory appeal
12 will simply delay discovery, dispositive motions, and perhaps
13 trial. And even if the Court of Appeals were to resolve an
14 interlocutory appeal in the defendants' favor, the plaintiffs
15 would likely be granted leave to replead. For this reason,
16 "interlocutory appeals in the preliminary stages of litigation
17 are regularly denied because reversal at most could lead only
18 to a remand for repleading with possibilities of further
19 interlocutory appeals thereafter." *King v. Habib Bank Ltd.*,
20 No. 20 CIV. 4322, 2024 WL 3761821, at *1 (S.D.N.Y. Jan. 2,
21 2024).

22 The motion for an interlocutory appeal is therefore
23 denied. The clerk is respectfully requested to close ECF No.
24 61.

25 Okay. I thank you all for the thorough briefing and

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1 for the argument. By the way, I appreciate that whether to
2 grant argument is within the discretion of the Court, but in
3 this case, the defendants sought oral argument with respect to
4 both motions. Yes, it's somewhat unusual to have oral argument
5 on these sorts of motions, but it was also somewhat unusual to
6 me to have specific request for oral argument on these motions.
7 So in response to the request, I granted argument. I tried to
8 cooperate with the parties' request when I can. Thank you all.

9 (Adjourned)

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